

BOARD OF ZONING APPEALS

**Springfield, Ohio
Monday May 17, 2021
7:00 P.M.
City Hall Forum**

**Meeting Minutes
(Summary format)**

Vice-Chairperson called the meeting to order at 7:00 P.M.

MEMBERS PRESENT: Mr. Charles Harris, Mr. Mathew Ryan and Mr. Brown, Mr. James Burkhardt, Ms. Denise Williams and Ms. Dori Gaier.

MEMBERS ABSENT: Ms. Rhonda Zimmers.

OTHERS PRESENT: Stephen Thompson, Planning, Zoning, and Code Administrator
Cheyenne Shuttleworth, Community Development Specialist.

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SUBJECT: Approval April 19, 2021 meeting minutes.

Ms. Gaier asked if the Board had any corrections or additions to add to the minutes.

Hearing none, Ms. Gaier asked the Board members to voice yes if they were in favor of approving the minutes. Members voiced yes.

Ms. Gaier asked if any opposed to voice nay. Hearing none, Ms. Gaier stated the minutes stand approved.

Case #21-A-20 Request from Sean Shuttleworth for a variance from 1156.01 to construct a privacy fence in a front yard at 300 Glenmore Dr. in a RS-5, Low-Density, Single-Family Residence District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to construct a privacy fence in a front yard. It will be a six foot tall Cedar fence. The property is on a corner, with front yards along multiple streets. The setback requirement for privacy fences over 2.5 feet tall in a front yard is 25 feet.

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of

Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: *Yes.*

2. Whether the variance is substantial;

Staff Comment: *No. It's a corner lot, so the other front yard will be open.*

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: *No.*

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: *No.*

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: *Yes.*

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: *No.*

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: *Yes.*

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval

Police Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant wished to speak. Hearing none, Ms. Gaier asked if there were any further questions or if anyone else wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Williams made a motion to close the public hearing. Seconded by Ms. Ryan. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-20.

MOTION: Motion by Mr. Burkhardt to approve Case #21-A-20, request from Sean Shuttleworth for a variance from 1156.01 to construct a privacy fence in a front yard at 300 Glenmore Dr. in a RS-5, Low-Density, Single-Family Residence District. Seconded by Ms. Williams.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. It replaces an existing fence.
3. Similar cases have been approved in the past.

YEAS: Mr. Ryan, Mr. Burkhardt, Mr. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.

NAYS: None.

Motion approved 6 to 0.

Case #21-A-21 Request from Mental Health Services for Clark and Madison Counties, Inc. for a variance from Chapter 1150 to allow for building expansion in a front yard setback at 474 N Yellow Springs St. in a CN-2 UPOD, Neighborhood Commercial District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the

staff report.

The applicant seeks a variance to construct a building addition in a front yard setback. The expansion will be to allow for additional services for school aged children. The front yard setback requirement for the CN-2 district is 20 feet. The addition will not be closer than seven feet to the property line.

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in *Kisil v. City of Sandusky*, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in *Duncan v. Village of Middlefield*, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: No. The site has limited potential for other expansion.

2. Whether the variance is substantial;

Staff Comment: Yes.

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: No.

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: No.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval

Police Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or the applicant's agent wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Brown made a motion to close the public hearing. Seconded by Mr. Burkhardt. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-21.

MOTION: Motion by Ms. Williams to approve Case #21-A-21 Request from Mental Health

Services for Clark and Madison Counties, Inc. for a variance from Chapter 1150 to allow for building expansion in a front yard setback at 474 N Yellow Springs St. in a CN-2 UPOD , Neighborhood Commercial District. Seconded by Mr. Harris.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. It is a good use of property.
3. The City Service Department did not cite any traffic issues.

YEAS: Mr. Ryan, Mr. Burkhardt, Mr. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.

NAYS: None.

Motion approved 5 to 0.

Case #21-A-22 Request from Fastsigns for a conditional use permit to allow for a multi-color dynamic digital display at 633 N Limestone St. in a CO-1, Commercial Office District

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a conditional use permit to allow a multi-color dynamic digital display sign. The size of the digital portion will be 32 square feet on each side. It will be located in the same place as the existing sign.

ANALYSIS for Conditional Use:

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- 1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

Staff Comment: *It would not.*

- 2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

Staff Comment: Yes.

- 3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

Staff Comment: Yes.

- 4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

Staff Comment: Yes.

- 5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Staff Comment: Yes.

- 6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Staff Comment: It will not.

- 7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Staff Comment: Yes, it does.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval

Police Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the conditional use permit.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or applicant's agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Brown made a motion to close the public hearing. Seconded by Ms. Williams. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-22.

MOTION: Motion by Ms. Williams to approve Case #21-A-22 Request from Fastsigns for a conditional use permit to allow for a multi-color dynamic digital display at 633 N Limestone St. in a CO-1, Commercial Office District. Seconded by Mr. Ryan.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. The sign will be better for business.
3. Similar cases have been approved in the past.

YEAS: Mr. Ryan, Mr. Burkhardt, Mr. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.

NAYS: None.

Motion approved 6 to 0.

Case #21-A-23 Request from Fastsigns for a variance from Chapter 1155 to allow for a

multi-color dynamic digital display at 633 N Limestone St. in a CO-1, Commercial Office District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to construct a multi-color dynamic digital display in a CO-1, Commercial Office District. Chapter 1155 states multi-color displays are permitted in the Commercial Arterial sign district, but not the CO-1 zoning district.

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: Yes.

2. Whether the variance is substantial;

Staff Comment: Yes. *Multi-color dynamic digital displays are not permitted in the Commercial Arterial sign district.*

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: *Yes.*

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: *No.*

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: *Yes.*

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval

Police Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or applicant's agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Mr. Burkhardt made a motion to close the public hearing. Seconded by Mr. Brown. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-23.

MOTION: Motion by Ms. Williams to approve case #21-A-23 Request from Fastsigns for a variance from Chapter 1155 to allow for a multi-color dynamic digital display at 633 N Limestone St. in a CO-1, Commercial Office District. Seconded by Mr. Burkhardt.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. The sign falls into line with the previous case.
3. A precedence had been set.

YEAS: Mr. Ryan, Mr. Burkhardt, Mr. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.

NAYS: None.

Motion approved 6 to 0.

Case #21-A-24 Request from Sandy Bise for a conditional use permit to allow for a commercial recreational sue (martial arts studio) at 105 N Thompson Ave in a CI-1, Intensive Commercial District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a conditional use permit to relocate a martial arts studio. The studio is currently in the Upper Valley mall, which will be closing in June.

ANALYSIS for Conditional Use:

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

1. Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

Staff Comment: *It would not.*

2. Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

Staff Comment: *Yes.*

3. Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

Staff Comment: Yes.

4. Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

Staff Comment: Yes.

5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

Staff Comment: Yes.

6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

Staff Comment: It will not.

7. Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

Staff Comment: Yes, it does.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department:	Recommend approval
Building Inspections:	Recommend approval
Police Division:	Recommend approval
Fire Department:	Recommend approval
City Manager's Office:	Recommend approval

STAFF RECOMMENDATION:

Approval of the conditional use permit.

Ms. Gaier asked if the board had any questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the board if the applicant or applicant's agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Ms. Williams made a motion to close the public hearing. Seconded by Mr. Brown. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-24.

MOTION: Motion by Mr. Harris to approve case #21-A-24 Request from Sandy Bise for a conditional use permit to allow for a commercial recreational sue (martial arts studio) at 105 N Thompson Ave in a CI-1, Intensive Commercial District. Seconded by Mr. Ryan.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. There is no opposition.
2. It is a new business.
3. The business fills a vacant space in the city.

YEAS: Mr. Ryan, Mr. Burkhardt, Mr. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.
NAYS: None.

Motion approved 6 to 0.

Case #21-A-25 Request from Greg Baca for a variance from Chapter 1101.03 to allow for a fence on a parcel without a principal structure at 2201-2203 & 2209-2211 Larch St. in a CI-1, Intensive Commercial District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to construct a fence on a lot without a principal structure. The lot will be used to store vehicles and equipment.

ANALYSIS for Variance:

The Board may grant a variance only where there exists a "practical difficulty" as defined by the courts in Ohio in established case law. The Ohio Supreme Court's decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between "use" and "area variances." Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme

Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: Yes.

2. Whether the variance is substantial;

Staff Comment: Yes. There are currently no structures on the lot and the applicant does not plan on building one.

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: No.

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: No.

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: Yes.

6. Whether the property owner's predicament can be obviated through some method other than a variance; or

Staff Comment: No.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval

Police Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson.

Mr. Thompson explained he received phone calls and letters from surrounding neighbors opposing the case due to the amount of trash on the applicant's property.

Mr. Ryan asked how high the fence would be.

Mr. Thompson explained he was not sure but he could but up to and eight foot fence up.

Ms. Gaier asked if the applicant or applicant's agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing,

MOTION: Ms. Williams made a motion to close the public hearing. Seconded by Mr. Harris.
Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-25.

MOTION: Motion by Mr. Burkhardt to reopen the public hearing for Case # 21-A-25. Seconded by Ms. Williams.

Mr. Ryan asked if there were addresses for where the complaints came from.

Mr. Thompson stated they were on Larch Street.

Ms. Williams asked if the opposition was for the current owner or the buyer.

Ms. Gaier explained the opposition was for the potential buyer and the potential buyer is the applicant.

Mr. Thompson explained the opposition was not for the current owner, it was for the potential buyer based off of his other properties along Columbus Avenue.

Ms. Williams asked if there had been anything done.

Mr. Thompson stated Code Enforcement has issued orders, cleaned the property and has issues fines in the past for junk and trash.

Mr. Ryan asked what the property was zoned for.

Mr. Thompson stated the property was zoned for CI-1, Intensive Commercial District. Allowing storage of commercial equipment and vehicles. Mr. Thompson explained it still requires a variance to build a fence around the property.

Ms. Gaier explained a fence would help with not seeing the trash or salvage material.

MOTION: Mr. Ryan made a motion to close the public hearing. Seconded by Mr. Harris. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-25.

MOTION: Motion by Mr. Burkhardt to approve Case #21-A-25 Request from Greg Baca for a variance from Chapter 1101.03 to allow for a fence on a parcel without a principal structure at 2201-2203 & 2209-2211 Larch St. in a CI-1, Intensive Commercial District. Seconded by Mr. Harris.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The neighbors expressed concerns about applicants other properties having a lot of trash on the properties.
2. It is a good use of land.
3. The property would be better with a fence.

YEAS: Mr. Ryan, Mr. Burkhardt, Mr. Harris, Mr. Brown, Ms. Williams and Ms. Gaier.

NAYS: None.

Motion approved 6 to 0.

Case #21-A-26 Request from Greg Baca for a variance from Chapter 1153.04 to allow for a new gravel parking lot at 2201-2203 & 2209-2211 Larch St. in a CI-1, Intensive Commercial District.

Ms. Gaier stated that the public hearing was now open and asked for Mr. Thompson to read the staff report.

The applicant seeks a variance to install a gravel parking lot to store vehicles and equipment. Chapter 1153 states parking areas shall be constructed with "Asphalt, Concrete, Brick/Block (Permeable) Pavers, Grass Pavers/Porous Pavement or Pervious Concrete."

ANALYSIS for Variance:

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Staff Comment: *Yes. It can be constructed as prescribed by code.*

2. Whether the variance is substantial;

Staff Comment: *Yes. Gravel is not an appropriate parking surface.*

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Staff Comment: *No. The salvage yard next to this parcel has a gravel parking area.*

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

Staff Comment: *No.*

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

Staff Comment: *Yes.*

6. Whether the property owner’s predicament can be obviated through some method other than a variance; or

Staff Comment: *No.*

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Staff Comment: Yes.

RETURNED REPORTS FROM STAFF:

Service/Engineering Department: Recommend approval

Building Inspections: Recommend approval

Police Division: Recommend approval

Fire Department: Recommend approval

City Manager's Office: Recommend approval

STAFF RECOMMENDATION:

Approval of the variance.

Ms. Gaier asked if the board had any questions for Mr. Thompson.

Mr. Burkhardt asked if the gravel parking lot was out of the norm.

Mr. Thompson explained there has been gravel parking lots approved in the past. Mr. Thompson explained the service department typically recommends denial because of the gravel getting into the storm sewers. Mr. Thompson explained on larch street there were no sidewalks or curbs and he didn't believe it was as big of an issue in that area.

Mr. Burkhardt explained he had a hard time telling someone no and then telling someone yes because of the area they live in.

Ms. Gaier asked if there were any further questions for Mr. Thompson. Hearing none, Ms. Gaier asked if the applicant or applicant's agent wished to speak. Hearing none, Ms. Gaier asked if there was anyone else that wished to speak. Hearing none, Ms. Gaier asked for a motion to close the public hearing.

MOTION: Mr. Burkhardt made a motion to close the public hearing. Seconded by Mr. Harris. Approval by voice vote.

Ms. Gaier stated that the public hearing was now closed and asked for a motion to approve Case #21-A-26.

MOTION: Motion by Ms. Williams to approve Case #21-A-26 Request from Greg Baca for a variance from Chapter 1153.04 to allow for a new gravel parking lot at 2201-2203 & 2209-2211 Larch St. in a CI-1, Intensive Commercial District. Seconded by Mr. Ryan.

Hearing no further discussion or questions, the Board determined the following findings of facts:

1. The previous variance case for the property was approved for a fence.
2. There is no opposition for gravel, the opposition was for fence.
3. Gravel is appropriate for location.

YEAS: Mr. Ryan, Mr. Brown, Ms. Williams and Ms. Gaier.

NAYS: Mr. Harris and Mr. Burkhardt.

Motion approved 4 to 2.

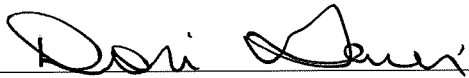
Board Comments: None.

Staff Comments: None.

Subject: Adjournment

Mr. Williams made a motion to adjourn the meeting. Seconded by Mr. Burkhardt.

Ms. Gaier adjourned the meeting at 7:44 p.m.



Ms. Dori Gaier, Chairperson

Ms. Denise Williams, Vice-Chairperson